

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$4,742.73 for date of service 07/11/01.
- b. The request was received on 01/31/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/10/02
 - b. HCFA(s)
 - c. TWCC 62 forms
 - d. Medical Records
 - e. EOBs from other carriers
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. Response to a Request for Dispute Resolution dated 06/07/02.
 - b. Carrier's methodology
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. There is no carrier signed sheet in the case file. The provider submitted their initial request on 01/31/02, the carrier responded with their 3 day response on 02/06/02. The provider submitted their 14 day response of additional information on 05/22/02 and the carrier responded with their 14 day response on 06/07/02. All of the information in the case file submitted will be reviewed and a decision will be rendered accordingly.

III. PARTIES' POSITIONS

1. Requestor:
 - a. The Requestor asserts that charges were for facility fees not professional fees. The payment received only represents 19% of the total billed amount. Other workers' compensation carriers reimburse at 85-100%. Additional reimbursement is sought in the amount of \$4,742.73 for the date of service 07/11/01.

2. Respondent:

“Provider has the burden proof in this case. The **only** evidence offered by Provider is EOBs from several other carriers. The State Office of Administrative Hearings has specifically rejected the use of EOBs to establish compliance with the Act’s statutory reimbursement standards. The Provider has simply not met its burden of proof under 133.305(e)(1)(F) to establish that its billed charges of **\$5,642.73** meet the statutory standards under the Act. In the contrary, this amount is grossly excessive as established by the Commission’s inpatient surgical per diem rate; the Medicare payment rate; the payment rate established by the workers’ compensation authorities in Nevada, Massachusetts, and Pennsylvania; and the anticipated rate under the ASC fee guideline being drafted by the Commission. For these reasons, Provider has not met its burden of proof to establish that its charges of \$5,642.73 comply with the Act’s statutory standards for reimbursement. Therefore, it is not entitled to additional reimbursement.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 07/11/01.
2. The provider billed \$5,642.73 for date of service 07/11/01.
3. The carrier paid \$900.00 for date of service 07/11/01.
4. The amount in dispute is \$4,742.73 for date of service 07/11/01.
5. The carrier denies additional reimbursement on the submitted EOB as “M-REASONABLE GLOBAL RATE IS BASED ON YOUR GEOGRAPHIC REGION. No MAR.”

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable.

The provider has submitted reimbursement data in the form of EOBs from other carriers that have the same ICD-9 code as the date of service in dispute. These EOBs indicate that the provider has received reimbursement from 85% to 100% of the billed amount.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304. The provider has submitted EOBs from other carriers in an effort to document fair and reasonable reimbursement. Regardless of the carrier's methodology or response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 5th day of August 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.